

STATE OF SOUTH DAKOTA)
 :
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT

SECOND JUDICIAL CIRCUIT

CINCINNATI INSURANCE COMPANY, as
Subrogee of Boomerang Investments, LLC and
PAve, LLC

Plaintiff,

vs.

HULTGREN CONSTRUCTION, LLC;
AARON HULTGREN, individually; RISE
STRUCTURAL ASSOCIATES, INC.;
RANDALL/STANLEY ARCHITECTS, INC.;
and LEGACY DEVELOPMENT &
CONSULTING COMPANY, LLC

Defendants.

CIV18-000_____

COMPLAINT

NOW COMES Plaintiff, Cincinnati Insurance Company, as Subrogee of Boomerang Investments, LLC, and PAve, LLC, by and through undersigned counsel, for its Complaint against Defendants Hultgren Construction, LLC; Aaron Hultgren, individually; Rise Structural Associates, Inc.; Randall/Stanley Architects, Inc.; and Legacy Development & Consulting Company, LLC, states as follows:

COMMON ALLEGATIONS

1. Plaintiff Cincinnati Insurance Company (“Cincinnati”), is an insurance corporation duly licensed to do business under the laws of the State of South Dakota.
2. Boomerang Investments, LLC (“Boomerang”), is a South Dakota limited liability company that owns real property located at 136 South Phillips Avenue, Sioux Falls, South Dakota 57104 (“the Subject Property”), as well as real property located at 130 South Phillips Avenue, Sioux Falls, South Dakota 57104.

3. PAve, LLC (“PAve”), is a South Dakota limited liability company that leases real property adjacent to the Subject Property, located at 130 South Phillips Avenue, Sioux Falls, South Dakota 57104.

4. Hultgren Construction, LLC (“Hultgren Construction”), is a South Dakota limited liability company engaged in the business of construction services. At all times material, Aaron Hultgren was President of Hultgren Construction.

5. Rise Structural Associates, Inc. (“Rise”), is a South Dakota limited liability company engaged in the business of structural engineering.

6. Randall/Stanley Architects Inc. (“RSArchitects”), is a South Dakota corporation engaged in the business of architectural services.

7. Legacy Development & Consulting Company, LLC (“Legacy”), is a South Dakota limited liability company engaged in the business of real estate development.

8. Aaron Hultgren, is a resident of South Dakota and natural person.

9. Cincinnati is a bona-fide subrogee of Boomerang pursuant to a policy of insurance issued by Cincinnati (Policy No. EPP 0401081), which provides coverage for Boomerang’s business and property located at the Subject Property.

10. Cincinnati is a bona-fide subrogee of PAve pursuant to a policy of insurance issued by Cincinnati (Policy No. EPP 0400832), which provides coverage for PAve’s business and property located at 130 South Phillips Avenue, Sioux Falls, South Dakota 57104

11. Legacy was the real estate developer in charge of overseeing and carrying out a renovation and construction project involving the Subject Property in late 2016.

12. Hultgren Construction was hired to serve as general contractor for the renovation and construction project involving the Subject Property.

13. Rise was hired to perform structural engineering services in conjunction with the construction project.

14. RSArchitects was hired to provide architectural services in conjunction with the construction project.

15. In the course of Hultgren's work on the construction project, one or more person working on the project proceeded with the removal of an interior wall for the purpose of construction a location for use by Lewis Drugstore.

16. Upon information and belief, Hultgren, Rise, and RSArchitects, were (or reasonably should have been) on site on multiple occasions during the construction project, provided advice (or reasonably should have provided) and recommendations with respect to shoring and removal of this load-bearing wall, and had ample opportunity to warn against the dangers of removing the load-bearing wall and/or recommended or regrouped actions, measures, or work to prevent personal injury and property damage or loss.

17. Upon further information and belief, Rise, RSArchitects, and Hultgren knew or reasonably should have known about visual signs of damage to the structure, including but not limited to, a crack in part of the same load-bearing wall that had appeared in an apartment unit within Boomerang's property during the same period of time.

18. On December 2, 2016, the Subject Property catastrophically collapsed, causing injury, damage, and loss.

19. Subsequent investigation determined that the collapse has been caused, in whole or in part, from the construction associated with removal the load-bearing wall, and the absence of temporary supports and or/use temporary structural supports, shoring, or other reasonable measures to provide support for the building during the construction process.

20. As a result of the collapse, Boomerang and PAve's properties sustained extensive physical damaged and millions of dollars in economic loss.

21. Pursuant to the policies of insurance issued to Boomerang and PAve by Cincinnati, Cincinnati paid sums in excess of \$4,844,611.95 to repair and replace damaged and/or destroyed property and to otherwise compensate its insureds for losses they sustained as a result of this collapse.

22. By virtue of said payments and according to the terms of the policies of insurance issued to Boomerang and Pave, Cincinnati has become, and is, subrogated to all rights, claims, remedies, entitlements, causes of action, and recoveries accruing to Boomerang and PAve against the Defendants.

COUNT I – NEGLIGENCE (HULTGREN CONSTRUCTION)

23. Cincinnati re-alleges and fully incorporates by reference the allegations contained in Paragraphs 1 through 22 as though fully set forth herein.

24. At all material times, Hultgren was under a duty to exercise reasonable care in performing its construction services including, but not limited to, follow all state and federal safety rules, laws, and regulations.

25. Hultgren materially breached its duty when it failed to properly plan for the safe removal of the wall, failed to properly oversee its work, or to shore the Subject Property prior to removing the load-bearing wall.

26. Hultgren Construction's conduct maybe gross, willful and wanton because Hultgren Construction performed these acts when they knew or reasonably should have known that a collapse of the Subject Property was probable.

27. As a direct and proximate result of the aforementioned negligent acts and omissions by Hultgren Construction, the Subject Property collapsed and damaged the property of Boomerang and PAve.

28. Pursuant to the policies of insurance issued to Boomerang and PAve by Cincinnati, Cincinnati paid sums in excess of \$4,844,611.95 to repair or replace damaged or destroyed property and to otherwise compensate its insureds for losses sustained by this collapse.

COUNT II – BREACH OF CONTRACT (HULTGREN CONSTRUCTION)

29. Cincinnati re-alleges and fully incorporates by reference the allegations contained in Paragraphs 1 through 28 as though fully set forth herein.

30. On or about August 30, 2016, Hultgren Construction entered into a legally enforceable contract with Boomerang. Pursuant to that contract, Boomerang would pay Hultgren Construction in exchange for Hultgren Construction's general contractor services for the renovation and construction project involving the Subject Property.

31. Boomerang fully performed its contracted obligations.

32. Pursuant to the contract, Hultgren Construction, among other things, had a duty to perform its work in a good and workmanlike manner, and had a contractual duty to perform competent work. Hultgren also had a duty not to injure or damage persons, property, or things. It was understood and implicit that Hultgren would at all times comply with federal, state, and local laws, rules, standards, and requests apply to the project.

33. Hultgren Construction materially breached one or more of its contractual obligations all allegedly herein.

34. The removal of the load-bearing wall was the cause of the collapse that damaged the property of Boomerang and PAve.

35. Pursuant to the policies of insurance issued to Boomerang and PAve by Cincinnati, Cincinnati paid sums in excess of \$4,844,611.95 to repair or replace damaged or destroyed property and to otherwise compensate its insureds for losses sustained by this collapse.

COUNT III – NEGLIGENCE (AARON HULTGREN)

36. Cincinnati re-alleges and fully incorporates by reference the allegations contained in Paragraphs 1 through 35 as though fully set forth herein.

37. At all material times, Aaron Hultgren was under a duty to exercise reasonable care in performing his construction services, a duty separate and independent from the duties of by Hultgren Construction.

38. Aaron Hultgren materially breached that duty when he failed to properly plan for removal of the wall, or shore and/or oversee the shoring of the Subject Property, or take steps to ensure the safety of persons and to protect property damage.

39. Aaron Hultgren's conduct gross, willful, and wanton because he removed the load-bearing wall with the conscious realization that a collapse of the Subject Property was probable, as were the damages and losses resulting therefrom.

40. As a direct and proximate result of the aforementioned negligent acts or omissions on the part of Aaron Hultgren, the Subject Property collapsed and damaged the property of Boomerang and Pave and caused other injuries and losses.

41. Pursuant to the policies of insurance issued to Boomerang and PAve by Cincinnati, Cincinnati has paid sums in excess of \$4,844,611.95 to repair or replace damaged or destroyed property and to otherwise compensate its insureds for losses sustained by this collapse.

COUNT IV – NEGLIGENCE (RISE)

42. Cincinnati re-alleges and fully incorporates by reference the allegations contained in Paragraphs 1 through 41 as though fully set forth herein.

43. At all material times, Rise was under a duty to exercise reasonable care in performing its engineering services and to refrain from negligent acts or omissions.

44. Rise breached its duty when, among other things, it failed to prevent Hultgren Construction from removing the load-bearing wall, failed to warn, failed to properly secure, and/or failed to inspect and verify that safety procedures were being followed.

45. As a direct and proximate result of Rise's failure to prevent Hultgren Construction from removing the load-bearing wall, the load-bearing wall was removed and the Subject Property collapsed, damaging the property of Boomerang and PAve.

46. Pursuant to the policies of insurance issued to Boomerang and Pave, Cincinnati paid sums in excess of \$4,844,611.95 to repair or replace damaged or destroyed property and to otherwise compensate its insureds for losses sustained by this collapse.

COUNT V – PROFESSIONAL NEGLIGENCE (RISE)

47. Cincinnati re-alleges and fully incorporates by reference the allegations contained in Paragraphs 1 through 46 as though fully set forth herein.

48. Rise performed engineering services for the construction of the Subject property.

49. Rise was under a professional duty of care to exercise such care, skill, and diligence as engineers would ordinarily practice under similar circumstances.

50. Rise materially breached the standard of care through its actions or omissions including, but not limited to, failing to provide structural support in safety measures related to the work on the load-bearing wall.

51. The actions or omissions of Rise, individually or in concert with those of others, , constitute a failure to exercise the reasonable care, skill and diligence reasonably expected of an engineer tasked with providing structural engineering services in the renovation of a building.

52. As a direct and proximate result of Rise's negligent acts/or omissions the Subject Property collapsed, damaging the property of Boomerang and Pave and causing significant damage, injury, and loss.

53. Pursuant to the policies of insurance issued to Boomerang and PAve by Cincinnati, Cincinnati paid sums in excess of \$4,844,611.95 to repair or replace damaged or destroyed property and to otherwise compensate its insureds for losses sustained by this collapse.

COUNT VI – NEGLIGENCE (RSARCHITECTS)

54. Cincinnati re-alleges and fully incorporates by reference the allegations contained in Paragraphs 1 through 53 as though fully set forth herein.

55. At all material times, RSArchitects was under a duty to exercise reasonable care in performing its architectural services and to refrain from negligent acts or omissions.

56. RSArchitects materially breached that duty in numerous respects including, but not limited to, failing to protect property and persons related to removal of the load-bearing wall. RSArchitects further failed to identify or warn of signs of collapse.

57. As a direct and proximate result of RSArchitects's failure to prevent Hultgren Construction from removing the load-bearing wall, the load-bearing wall was removed and the Subject Property collapsed, damaging the property of Boomerang and Pave and causing significant injury and loss.

58. Pursuant to the policies of insurance issued to Boomerang and PAVE by Cincinnati, Cincinnati paid sums in excess of \$4,844,611.95 to repair or replace damaged or destroyed property and to otherwise compensate its insureds for losses sustained by this collapse.

COUNT VII – PROFESSIONAL NEGLIGENCE (RSARCHITECTS)

59. Cincinnati re-alleges and fully incorporates by reference the allegations contained in Paragraphs 1 through 58 as though fully set forth herein.

60. RSArchitects performed engineering services for the construction of the Subject property.

61. RSArchitects was under a professional duty of care to exercise such care, skill, and diligence as architects would ordinarily practice under like circumstances.

62. RSArchitects deviated from that standard of care when it failed to prevent Hultgren Construction from removing the load-bearing wall.

63. These facts, individually and in the aggregate, constitute a failure to exercise the reasonable care, skill and diligence reasonably expected of an architect tasked with providing structural architectural advice in the renovation of a building.

64. As a direct and proximate result of RSArchitects's failure to prevent Hultgren Construction from removing the load-bearing wall, the load-bearing wall was removed and the Subject Property collapsed, damaging the property of Boomerang and PAVE.

65. Pursuant to the policies of insurance issued to Boomerang and PAve by Cincinnati, Cincinnati paid sums in excess of \$4,844,611.95 to repair or replace damaged or destroyed property and to otherwise compensate its insureds for losses sustained by this collapse.

COUNT VIII – NEGLIGENCE (LEGACY)

66. Cincinnati re-alleges and fully incorporates by reference the allegations contained in Paragraphs 1 through 65 as though fully set forth herein.

67. At all material times, Legacy was under a duty to exercise reasonable care in safely develop the property and adequately oversee the construction project at the Subject Property.

68. Legacy breached that duty when it failed to properly oversee the project and prevent Hultgren Construction from removing the load-bearing wall.

69. As a direct and proximate result of Legacy's failure to fulfill its obligations as the property developer and prevent Hultgren Construction from removing the load-bearing wall, the load bearing wall was removed and the Subject Property collapsed, damaging the property of Boomerang and PAve.

70. Pursuant to the policies of insurance issued to Boomerang and PAve by Cincinnati, Cincinnati paid sums in excess of \$4,844,611.95 to repair or replace damaged or destroyed property and to otherwise compensate its insureds for losses sustained by this collapse.

Cincinnati Insurance Company

WHEREFORE, CINCINNATI INSURANCE COMPANY, as Subrogee of Boomerang Investments, LLC, and PAve, LLC, respectfully requests judgment be entered in its favor and against: Hultgren Construction, LLC, Aaron Hultgren, individually, Rise Structural Associates, Inc., Randall/Stanley Architects, Inc., and Legacy Development & Consulting Company, LLC, jointly and severally in the amount of at least \$4,844,611.95, plus costs, and for such other or further relief as this Court deems equitable and just.

Dated this 29th day of June, 2018.

BANGS, McCULLEN, BUTLER, FOYE & SIMMONS, LLP

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